

KINGSLEY & KINGSLEY, APC

ERIC B. KINGSLEY, Esq., Cal. Bar No. 185123

eric@kingsleykingsley.com

KELSEY M. SZAMET, Esq., Cal. Bar No. 260264

kelsey@kingsleykingsley.com

DAVID KELEDJIAN, Esq., Cal. Bar No. 309135

davidk@kingsleykingsley.com

16133 Ventura Blvd., Suite 1200

Encino, CA 91436

Telephone: (818) 990-8300

Fax: (818) 990-2903

DAVTYAN PROFESSIONAL LAW CORPORATION

EMIL DAVTYAN, Esq., Cal. Bar No. 299363

emil@davtyanlaw.com

5959 Topanga Canyon Blvd, Suite 130

Woodland Hills, CA 91367

Telephone: (818) 875-2008

Fax: (818) 722-3974

Attorneys for Plaintiff and the Proposed Class

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

LUCAS VALADEZ, an individual, on
behalf of himself and others similarly
situated

PLAINTIFF,

v.

DELOITTE CONSULTING LLP; and
DOES 1 thru 50, inclusive

DEFENDANTS.

CASE NO.

**CLASS ACTION COMPLAINT
FOR:**

1. Violation of the Fair Credit Reporting Act for Failure to Make Proper Disclosures, 15 U.S.C. § 1681b(b)(2)(A)(i);
2. Violation of the Fair Credit Reporting Act for Failure to Obtain Proper Authorization, 15 U.S.C. § 1681b(b)(2)(A)(ii);

DEMAND FOR A JURY TRIAL

1 Plaintiff LUCAS VALADEZ (“Plaintiff”), on behalf of himself and all others
2 similarly situated, alleges on information and belief, except for his own acts and
3 knowledge, the following:

4 **I.**

5 **INTRODUCTION**

6 1. Defendant DELOITTE CONSULTING LLP ("Defendant") is a
7 Delaware Corporation and at all relevant times mentioned herein conducted and
8 continues to conduct substantial and regular business throughout California.

9 2. Defendant is a consulting company operating within the consumer
10 discretionary sector and specializes in providing financial advisory and tax services,
11 including information technology services, outsourcing, and strategy and operations,
12 nationwide.

13 3. Plaintiff applied, was hired, and performed work for Defendant in
14 Seaside, California.

15 4. Upon information and belief, during the application process, Plaintiff
16 filled out Defendant’s “EMPLOYMENT APPLICATION” form on or about
17 October 17, 2018 attached hereto as Exhibit 1.

18 5. Upon information and belief, Plaintiff signed Defendant’s “OFFER
19 SUMMARY” form on or about October 24, 2018 attached hereto as Exhibit 2.

20 6. Upon information and belief, Defendant procured a consumer report
21 pertaining to Plaintiff.

22 7. Defendant violated 15 U.S.C. § 1681b(b)(2)(A)(i) which requires that,
23 to procure a consumer report or cause a consumer report to be procured for
24 employment purposes, a clear and conspicuous disclosure has been made in writing
25 to the consumer at any time before the report is procured or causes to be procured,
26 in a document that consists solely of the disclosure, that a consumer report may be
27 obtained for employment purposes. Defendant failed to provide a “clear and
28 conspicuous disclosure” in writing that consists solely of the disclosure.

1 8. Defendant violated 15 U.S.C. § 1681b(b)(2)(A)(ii) which requires that
2 the consumer has authorized in writing (which authorization may be made on the
3 document referred to in clause (i)) the procurement of the report. Defendant failed
4 to obtain authorization to procure a consumer report at all,

5 9. Due to Defendant's violations of the FCRA as alleged, Plaintiff was
6 confused regarding the nature of his rights under the FCRA.

7 10. Plaintiff now brings this Class Action on behalf of himself and a
8 proposed class, defined as:

9 All employees in the United States for whom Defendant obtained a
10 consumer report without providing a clear and conspicuous
11 disclosure in writing in a document that consists solely of the
12 disclosure and obtaining authorization in writing at any time during
13 the period beginning five (5) years prior to the filing of this action
14 to the present. (the "Proposed Class")

14 II.

15 JURISDICTION AND VENUE

16 11. The Court has jurisdiction over Plaintiff's federal claims pursuant to 28
17 U.S.C. §1331 and 15 U.S.C. §1681 of the FCRA.

18 12. Venue is proper in this district pursuant to 28 U.S.C. §1391(d) because
19 Defendant is subject to personal jurisdiction in this district, maintains offices in this
20 district, and the actions at issue took place in this district.

21 III.

22 THE PARTIES

23 A. PLAINTIFF

24 13. Plaintiff applied, was hired and performed work for Defendant in
25 California from on or about November 25, 2018 through May 29, 2019 as a salaried
26 employee with the title of "project delivery senior analyst."

27 14. Upon information and belief, during the application process, Plaintiff
28 filled out Defendant's "EMPLOYMENT APPLICATION" form on or about

October 17, 2018 attached hereto as Exhibit 1.

15. Upon information and belief, Plaintiff signed Defendant's "OFFER SUMMARY" form on or about October 24, 2018 attached hereto as Exhibit 2.

B. DEFENDANT

16. Defendant is a Delaware Corporation. At all times relevant herein, Defendant conducted and continues to conduct business throughout the State of California including hiring and employees such as Plaintiff.

17. Defendant's entity address listed with the California Secretary of State is 30 Rockefeller Plaza, New York, NY, 10112.

18. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, and/or carried out a joint scheme, business plan or policy in all respects pertinent hereto, and/or the acts of each Defendant are legally attributable to the other Defendant(s).

IV.

NATURE OF THE ACTION

19. The FCRA provides individuals with a number of rights. Specifically pertaining to employment-related background checks referred to as "consumer reports", the FCRA provides that a prospective employee must be provided a clear and conspicuous disclosure in writing before the report is procured in a document that consists solely of the disclosure; and the consumer has authorized in writing the procurement of the report.

20. The FCRA's disclosure and authorization requirements are listed in 15 U.S.C. § 1681b(b)(2)(A).

V.

FACTUAL ALLEGATIONS

21. Plaintiff worked for Defendant in California.

22. In connection with his employment, during the application process,

1 Plaintiff filled out Defendant's "EMPLOYMENT APPLICATION" form on or
2 about October 17, 2018 attached hereto as Exhibit 1.

3 23. Plaintiff signed Defendant's "OFFER SUMMARY" form on or about
4 October 24, 2018 attached hereto as Exhibit 2.

5 24. Upon information and belief, Defendant required all proposed class
6 members to complete the same standard forms.

7 25. Defendant's standard forms violate 15 U.S.C. § 1681b(b)(2)(A)(i)'s so-
8 called "standalone" disclosure and "clear and conspicuous" requirements. *Gilberg*
9 *v. California Check Cashing Stores, LLC* (9th Cir. 2019) 913 F.3d 1169, 1175-76.

10 26. Accordingly, Plaintiff was confused regarding the nature of his rights
11 under the FCRA and did not give valid authorization for Defendant to procure a
12 consumer report in violation of 15 U.S.C. § 1681b(b)(2)(A)(ii).

13 27. Nevertheless, Defendant procured or caused to be procured Plaintiff's
14 consumer report.

15 28. Defendant's failure to provide a compliant disclosure, and failure to
16 obtain proper authorization, deprived Plaintiff and others similarly situated of the
17 right to information and the right to privacy guaranteed by 15 U.S.C. §
18 1681b(b)(2)(A). *Syed v. M-I, LLC*, 853 F.3d 492, 499 (9th Cir. 2017).

19 29. By failing to provide a clear and conspicuous disclosure in a standalone
20 document, Defendant's conduct is contrary to the plain language of the statute, case
21 law, and unambiguous regulatory guidance from the Federal Trade Commission
22 ("FTC").

23 30. Thus, Defendant "willfully" violated the FCRA. Defendant knew that
24 its standard FCRA form must not contain surplus or extraneous information related
25 to state disclosures and must be clear and not likely to confuse a reasonable reader.

26 VI.

27 THE CLASS

28 31. Plaintiff brings this action on behalf of himself and all others similarly

1 situated as a Class Action pursuant to Rule 23(a) and 23(b)(3) of the F.R.C.P.
2 Plaintiff satisfies the requirements of Rule 23(a) and (b)(3) for the prosecution of
3 this action as a class action. Plaintiff seeks to represent a class defined as follows:

4 All employees in the United States for whom Defendant obtained a
5 consumer report without providing a clear and conspicuous
6 disclosure in writing in a document that consists solely of the
7 disclosure and obtaining authorization in writing at any time during
8 the period beginning five (5) years prior to the filing of this action
9 to the present. (the "Proposed Class")

10 32. Plaintiff reserves the right to amend or modify the Class description
11 with greater specificity or further division into subclasses or limitation to particular
12 issues.

13 33. This class action on behalf of members of the Proposed Class meets the
14 statutory prerequisites for the maintenance of a class action as set forth in Rule 23(a)
15 and 23(b)(3) of the F.R.C.P.

16 A. Numerosity

17 34. The Proposed Class is so numerous that joinder of all class members is
18 impracticable.

19 35. While the precise number of members of the Proposed Class has not
20 been determined at this time, Plaintiff is informed and believes that Defendant,
21 during the relevant period, had applicants that numbered well over 1,000.

22 36. Plaintiff alleges that Defendant's records will provide information as to
23 the number of all members of the Proposed Class.

24 B. Commonality

25 37. There are questions of law and fact common to the Proposed Class that
26 predominate over any questions affecting only individual members of the Class.
27 These common questions of law and fact include, without limitation:

- 28 a. Whether Defendant violated 15 U.S.C. §1681b(b)(2)(A)(i)'s
"clear and conspicuous disclosure" requirement;

b. Whether Defendant violated 15 U.S.C. §1681b(b)(2)(A)(i)'s is requirement that a disclosure is provided "in a document that consists solely of the disclosure";

c. Whether Defendant acquires applicants' consumer reports without authorization in violation of 15 U.S.C. §1681b(b)(2)(A)(ii); and

d. Whether Defendant "willfully" violated the FCRA pursuant to 15 U.S.C. §1681n.

C. Typicality

38. The claims of the named Plaintiff are typical of the claims of the members of the Proposed Class.

39. Plaintiff is a member of the Proposed Class. Plaintiff was subjected to the same unlawful practices as other members of the Proposed Class.

40. Plaintiff suffered the same injuries and seeks the same relief as the members of the Proposed Class.

D. Adequacy of Representation

41. Plaintiff will fairly and adequately represent and protect the interests of the members of the Proposed Class.

42. Counsel for Plaintiff are competent and experience in litigation large complex consumer and wage and hour class actions.

E. Predominance and Superiority of a Class Action

43. A class action is superior to other available means for fair and efficient adjudication of this controversy. Individual joinder of all members of the Proposed Class is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members.

44. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be

1 encountered in the management of this action that would preclude its maintenance
2 as a class action.

3 45. Class action treatment will allow a large number of similarly situated
4 employees to prosecute their common claims in a single forum, simultaneously,
5 efficiently, and without the unnecessary duplication of effort and expense that
6 numerous individual actions would require. Further, the monetary amounts due to
7 many individual class members are likely to be relatively small, and the burden and
8 expense of individual litigation would make it difficult or impossible for individual
9 members of the members of the Proposed Class to seek and obtain relief. Moreover,
10 a class action will serve an important public interest by permitting employees
11 harmed by Defendant's unlawful practices to effectively pursue recovery of the sums
12 owed to them.

13 **VII.**

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF THE**

16 **FCRA [15 U.S.C. § 1681b(b)(2)(A)(i), *ET SEQ.*]**

17 **(BY PLAINTIFF AND ALL MEMBERS OF THE PROPOSED CLASS**

18 **AGAINST ALL DEFENDANTS)**

19 46. Plaintiff, and the other members of the Proposed Class, reallege and
20 incorporate by this reference, as though set forth herein, the prior paragraphs of this
21 complaint.

22 47. Under the FCRA, it is unlawful to procure a consumer report or cause
23 a consumer report to be procured for employment purposes, unless:

24 (i) a clear and conspicuous disclosure has been made in writing to
25 the consumer at any time before the report is procured or causes
26 to be procured, in a document that consists solely of the
27 disclosure, that a consumer report may be obtained for
employment purposes; and

28 (ii) the consumer has authorized in writing (which authorization may

1 be made on the document referred to in clause (i)) the
2 procurement of the report.

3 15 U.S.C. §§ 1681b(b)(2)(A)(i)-(ii)

4 48. Defendant's conduct violates the FCRA.

5 49. The question of whether a disclosure is "clear and conspicuous"
6 within the meaning of Section 1681b(b)(2)(A)(i) is separate from the question of
7 whether a document consists "solely" of a disclosure. *Syed, supra*, 853 F.3d at
8 503.

9 50. Defendant's standard FCRA form violates the "clear and conspicuous
10 disclosure" requirement in 15 U.S.C. § 1681b(b)(2)(A)(i). Defendant does not
11 provide a clear and conspicuous disclosure that it intends to obtain a consumer report
12 for employment purposes. In the OFFER SUMMARY, Defendant provides two
13 statements:

14 a. Background Investigation: This offer and your employment with
15 Deloitte Consulting LLP are conditional upon the successful
16 completion of a background investigation. (Exhibit 2, p. 2.)

17 b. Background Investigation: This offer and your employment with
18 Deloitte Consulting LLP are conditional upon the successful
19 completion of a background investigation into matters including,
20 but not limited to, your education and prior employment.
21 (Exhibit 2, p. 6.)

22 51. This disclosure is not a clear and conspicuous. Clear means
23 "reasonably understandable" and conspicuous means "readily noticeable to the
24 consumer." *Gilberg, supra*, 913 F.3d at 1176 citing to *Rubio v. Capital One Bank*,
25 613 F.3d 1195 (9th Cir. 2010).

26 52. The disclosure is buried in a 24-page document. It is not prominent and
27 sufficiently noticeable so that an applicant cannot easily overlook it. Defendant
28 buries its disclosure in a 24-page document amongst myriad other extraneous

1 information such as salary, signing bonus, annual incentive program, benefits, start
2 date, career development, travel, independence and compliance, code of ethics,
3 background investigation, project information, immigration, etc.

4 53. Defendant's disclosure violates the so-called "standalone" disclosure
5 requirement in 15 U.S.C. § 1681b(b)(2)(A)(i) (the FCRA disclosure must be "in a
6 document that consists solely of the disclosure") *Gilberg*, 913 F.3d at 1175.
7 Defendant's disclosure is embedded in the 24-page OFFER SUMMARY document.

8 54. This disclosure is not in a standalone document that consists solely of
9 a disclosure. A compliant disclosure is contained in a standalone form sufficiently
10 labeled and specifically separated for the consumer's review. As stated, Defendant
11 buries its disclosure in a 24-page document amongst myriad other points of
12 information such as salary, signing bonus, annual incentive program, benefits, start
13 date, career development, travel, independence and compliance, code of ethics,
14 background investigation, project information, immigration, etc.

15 55. The violations of the FCRA were willful based on the clear statutory
16 text, case law guidance, and regulatory guidance. The statutory text of the
17 standalone requirement is straightforward. The word "solely" in subsection (i) and
18 the one express exception in subsection (ii), which allows the authorization to be on
19 the same document as the disclosure, shows that "the FCRA should not be read to
20 have implied exceptions[.]" *Gilberg*, 913 F.3d at 1175 (citing to *Syed*, 853 F.3d at
21 501-03).

22 56. Defendant also had specific case law to provide guidance. *See Gilberg*,
23 913 F.3d at 1175 ("*Syed*'s holding and statutory analysis were not limited to liability
24 waivers; *Syed* considered the standalone requirement with regard to *any*
25 *surplusage*") (citing to *Syed*, 853 F.3d at 501) (emphasis added).

26 57. Lastly, informal guidance from the FTC is unambiguous that no
27 extraneous information should be included in the FCRA disclosure. *See* FTC,
28 Opinion Letter, 1997 WL 33791227, at *1 (Oct. 21, 1997) ("[The] document should

1 include nothing more than the disclosure and the authorization for obtaining a
 2 consumer report.”); FTC, Opinion Letter, 1998 WL 34323748, at *2 (Feb. 11, 1998)
 3 (disclosure may describe the “nature of the consumer reports” it covers, but
 4 otherwise should “not be encumbered with extraneous information”); FTC, Opinion
 5 Letter, 1998 WL 34323756, at *1 (June 12, 1998) (inclusion of a waiver in a
 6 disclosure form violates Section 1681b(b)(2)(A)).

7 58. In addition, Defendant’s violation of the “clear and conspicuous
 8 disclosure” requirement was willful. Defendant knew that its standard disclosure
 9 form must be clear and not buried amongst extraneous information, that would
 10 confuse a reasonable person about the nature of his rights under the FCRA.

11 59. Plaintiff and all other members of the Proposed Class are entitled to
 12 statutory damages of not less than \$100 and not more than \$1,000 for every willful
 13 violation of the FCRA, pursuant to 15 U.S.C. § 1681n(a)(1)(A).

14 60. Plaintiff and all other members of the Proposed Class are also entitled
 15 to punitive damages for these willful violations, pursuant to 15 U.S.C. § 1681n(a)(2).

16 61. Plaintiff and all other members of the Proposed Class are further
 17 entitled to recover their costs and attorneys’ fees, pursuant to 15 U.S.C.
 18 § 1681n(a)(3).

19 VIII.

20 SECOND CAUSE OF ACTION

21 FOR FAILURE TO OBTAIN PROPER AUTHORIZATION IN

22 VIOLATION OF THE FCRA [15 U.S.C. § 1681b(b)(2)(A)(ii)]

23 (BY PLAINTIFF AND ALL MEMBERS OF THE PROPOSED CLASS

24 AGAINST ALL DEFENDANTS)

25 62. Plaintiff, and the other members of the Proposed Class, reallege and
 26 incorporate by this reference, as though fully set forth herein, the prior paragraphs
 27 of this Complaint.

28 63. Since Defendant’s standard FCRA disclosure is not “clear and

conspicuous” and in a document that consists “solely” of the disclosure it violates 15 U.S.C. § 1681b(b)(2)(A)(i).

64. Accordingly, Plaintiff was confused regarding the nature of his rights under the FCRA and did not give valid authorization for Defendant to procure a consumer report in violation of 15 U.S.C. § 1681b(b)(2)(A)(ii).

65. Nevertheless, Defendant procured a consumer report or caused a consumer report to be procured for employment purposes on Plaintiff and the Proposed Class in violation of 15 U.S.C. § 1681b(b)(2)(A).

66. This violation of the FCRA is willful. 15 U.S.C. § 1681n. Defendant knew that its standard FCRA form be clear and conspicuous and must stand alone. In addition, Defendant knew that proper authorization is not possible without a legally compliant disclosure.

67. Plaintiff and all other members of the Proposed Class are entitled to statutory damages of not less than \$100 and not more than \$1,000 for every willful violation of the FCRA, pursuant to 15 U.S.C. § 1681n(a)(1)(A).

68. Plaintiff and all other members of the Proposed Class are also entitled to punitive damages for these willful violations, pursuant to 15 U.S.C. § 1681n(a)(2).

69. Plaintiff and all other members of the Proposed Class are further entitled to recover their costs and attorneys’ fees, pursuant to 15 U.S.C. § 1681n(a)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the Proposed Class:

A) That the Court certify the First and Second Causes of Action asserted by the Proposed Class as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3);

B) A determination and judgment that Defendant willfully violated 15

- 1 U.S.C. § 1681(b)(2)(A)(i) and(ii) of the FCRA;
- 2 C) Pursuant to 15 U.S.C. § 1681n(a)(1)(A), an award of statutory damages
- 3 to Plaintiff and all other members of the Proposed Class in an amount
- 4 equal to \$1,000 for Plaintiff and all other members of the Proposed
- 5 Class for each willful violation of the FCRA;
- 6 D) Pursuant to 15 U.S.C. § 1681n(a)(2), an award of punitive damages to
- 7 Plaintiff and all other members of the Proposed Class;
- 8 E) An award for costs of suit and reasonable attorneys' fees pursuant to 15
- 9 U.S.C. § 1681n(a)(3); and,
- 10 F) Such other and further relief as the Court deems just and equitable.
- 11

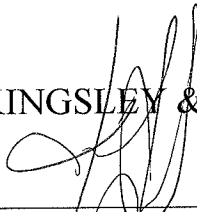
12 **DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands a trial of his claims by jury to the extent authorized

14 by law.

15 DATED: October 28, 2019

16 KINGSLEY & KINGSLEY, APC

17 By:  _____

18 Kelsey M. Szamet

19 David Keledjian

20 Attorneys for Plaintiff

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